Opinion No. 59-240—December 16, 1959

SUBJECT: COUNTY RECORDER—Must provide access to records on file in office, and may not charge fee for copying records with copier's own equipment, but may charge reasonable rental fee for extensive use of office, may make regulations for preservation of documents and orderly functioning of office.

Requested by: DISTRICT ATTORNEY, SISKIYOU COUNTY.

Opinion by: STANLEY MOSK, Attorney General.
Clayton P. Roche, Deputy.

The Honorable Albert H. Newton, Jr., District Attorney, Siskiyou County, has requested the opinion of this office on the following questions:

A member of the public desires to make photographic reproductions of records on file in the county recorder's office, using his own photographic equipment to do so. What fees, if any, may be charged such person for so doing. What regulatory measures, if any, may be imposed upon such person concerning his making such photographic reproductions?

The conclusion may be summarized as follows:

Pursuant to section 1892 of the Code of Civil Procedure and section 27200 of the Government Code, the county recorder must make all documents on file in his office readily available for inspection by the public and he must permit the public to make copies of any such document, photographic or otherwise, without charge. Such mandate is qualified by the recorder's duty to do all things necessary for the preservation of documents in his office and the orderly functioning of his office. Though no fee may be charged for the copying of records as such, a reasonable rental fee may be legally charged persons occupying county property for extended periods of time for the purpose of copying public records. If any special facilities are made available by the recorder to anyone, they should be made available to all on an equal basis.

ANALYSIS

Section 27366 of the Government Code provides (all references are to the Government Code unless otherwise specified):

> "The fee for any copy of any other record or paper on file in the office of the recorder, when the copy is made by him, is ten cents ($0.10) a folio. When any copy of any other record is made by photographic reproduction, the fee shall be one dollar ($1) for the first page and fifty cents ($0.50) for each additional page or portion thereof; provided, said page does not exceed 11 by 18 inches. The fee for photostatic copies of pages exceeding 11 by 18 inches shall be one dollar and fifty cents ($1.50) for the first page and eighty cents ($0.80) for each additional page or portion thereof."

It has been suggested that section 27366 requires the county recorder to charge the specified fees for photographic reproductions of records made by a member of the public even if he uses his own equipment. This suggestion stems from the fact that the first sentence of section 27366 refers to copies "made by him", the recorder, whereas the latter two sentences of this section relating to photo-copies omits any language as to who makes such copies.

Such suggestion fails to consider various other provisions of our codes. Section 27366 is merely one provision of title 3, division 2, part 3, chapter 6, article 5 of the Government Code. The first section of article 5, that is, section 27360, states that the county recorder shall collect the fees fixed in article 5 "for services performed by him." Where a private citizen makes photo-copies of records himself, using his own equipment, no "service" would be performed by the recorder as to the copies themselves. Of course, an incidental service, such as a search of records might be performed by the recorder, for which a fee could be charged under another code provision (sec. 27369).

Furthermore, section 1892 of the Code of Civil Procedure provides "Every citizen has a right to inspect and take a copy of any public writing of this State, except as otherwise expressly provided by statute." This right includes the taking of photographic reproductions (Ops. Cal. Atty. Gen. NS-3628, dated July 3, 1941). Section 27200 requires the recorder to permit public inspection without charge of all records on file in his office during office hours. It is, therefore, clear that any citizen may make a copy of any record on file in the recorder's office, photographic or otherwise, without payment of a fee for making such copy (33 Ops. Cal. Atty. Gen. 74).

This conclusion must be tempered, however, by the rule of reasonableness that one who is charged with the custody of records must have control of his office and of the records therein, and must, therefore, have some discretion in determining the manner in which persons may inspect and copy such records (26 Ops. Cal. Atty. Gen. 136). Since the duty of the custody of records on file in the recorder's office is the personal duty of the recorder (sec. 27231), all decisions necessary to the proper performance of this duty should be made by the recorder himself. Though a county board of supervisors has general supervisory control over county officers (sec. 25303), such supervisory control does not permit the board to restrict the powers of a county officer (Ops. Cal. Atty. Gen. No. NS-1914, dated August 28, 1939) nor does it permit the board to relieve a county officer from the proper performance of his duties (15 Ops. Cal. Atty. Gen. 46).

It is therefore concluded that a county recorder must permit private individuals to make copies of public records in his office, photographic or otherwise, without charge unless the making of such copies will disrupt the orderly functioning of his office. The decision as to when the making of such copies is disruptive is an administrative decision to be made by the recorder himself.

This office is informed that some counties have reached a practical solution to the problem of the wholesale microphotography of records in the recorder's

office. These counties have set aside space in the recorder's office for the use of title companies. The companies have installed their own photographic equipment and are permitted to maintain the equipment in the office on a permanent basis. Some counties charge a reasonable rental fee for such space, whereas other counties provide such space on a comity basis in exchange for services the title companies may perform for the recorder from time to time. Should the recorder decide that it would be feasible to rent space or equipment in his office for the purpose of the wholesale reproduction of records, he may do so, with the approval of the board of supervisors, under the power of a county to "manage, sell, lease, or otherwise dispose of its property as the interests of its inhabitants require" (sec. 23004, 15 Ops. Cal. Atty. Gen. 141). If any special facilities are made available by the recorder to one title company, they should, of course, be made available to all on an equal basis.

Opinion No. 59-326—December 17, 1959

SUBJECT: SMALL LOAN LAW—Lender licensed under, engaged in business of lending money to enable borrowers to pay automobile insurance premiums is not within scope of Unruh Act regulating credit and installment sales.

Requested by: ASSEMBLYMAN, 16th DISTRICT.

Opinion by: STANLEY MOSK, Attorney General.
Victor Griffith, Deputy.

The Honorable Walter I. Dahl, Assemblyman of the Sixteenth District, has requested the opinion of this office on the following question:

Do the activities of a lender, licensed under the California Small Loan Law, who engages in the business of lending money to borrowers to enable the borrowers to purchase automobile insurance, fall within the purview of the Unruh Act (Civ. Code, secs. 1801-1812.9)?

The conclusion may be summarized as follows:

The question is answered in the negative.

ANALYSIS

A lender licensed by the Commissioner of Corporations under the California Small Loan Law (Fin. Code, secs. 24000, *et seq.*) is engaged in the business of making loans to borrowers in order that the premiums for automobile insurance policies can be paid in full to the insurance companies at the time the policies are issued. The borrower makes a down payment of 30% of the premium. The balance, which represents the amount of the loan, is divided into ten monthly payments with interest and charges added to each payment. The borrower, in addition to signing a promissory note payable to the lender, executes a power of attorney in favor of the lender which authorizes the lender to cancel the insurance policy and collect any unearned premium. This power of attorney is exercised only in the event the borrower becomes delinquent in his payments